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*Additional Counsel Identified on Signature Page to Plaintiffs' Motion*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR  
RESTORATION OF THE  
ENVIRONMENT, INC., a Washington  
non-profit corporation; FRIENDS OF  
TOPPENISH CREEK, a Washington non-  
profit corporation; *and* CENTER FOR  
FOOD SAFETY, a Washington, D.C. non-  
profit corporation,

Plaintiffs,

v.

AUSTIN JACK DECOSTER, an individual,  
DECOSTER ENTERPRISES, LLC, a  
Delaware limited liability company,  
AGRICUTURAL INVESTMENT-FUND  
II, LLC, a Delaware limited liability  
company, IDAHO AGRI INVESTMENTS,  
LLC, an Idaho limited liability company,  
IDAHO DAIRY HOLDINGS, LLC, an  
Idaho limited liability company, DRY  
CREEK DAIRIES, LLC, an Idaho limited  
liability company, WASHIGNTON AGRI  
INVESTMENTS, LLC, a Washington  
limited liability company, WASHINGTON  
DAIRY HOLDINGS, LLC, a Washington  
limited liability company, DBD  
WASHINGTON, LLC, a Washington

Case No. 1:19-CV-3110-TOR

**DECLARATION OF JEAN MENDOZA  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR AWARD OF  
ATTORNEYS' AND EXPERT  
WITNESSES' FEES AND COSTS**

DECLARATION OF JEAN MENDOZA IN SUPPORT OF PLAINTIFFS'  
MOTION FOR AWARD OF FEES AND COSTS

1 limited liability company; and SMD, LLC, a  
2 Washington limited liability company,  
3 Defendants.

4 I, Jean Mendoza, hereby declare as follows:

5 1. I am over the age of eighteen and competent to make this declaration.

6 I am the executive director for the Friends of Toppenish Creek (“FOTC”). I make  
7 this declaration in support of Plaintiffs’ Motion for an Award of Fees and Costs.

8 2. Friends of Toppenish Creek is dedicated to protecting the rights of  
9 rural communities and improving oversight of industrial agriculture. FOTC  
10 operates under the simple principle that all people deserve clean air, clean water  
11 and protection from abuse that results when profit is favored over people. FOTC  
12 works through public education, citizen investigations, research, legislation,  
13 special events, and direct action.

14 3. Our members are farmers, farmworkers, teachers, artists, health care  
15 professionals, religious leaders, and others from many professions. We are very  
16 concerned about the impacts of industrial agriculture in our communities. We are  
17 concerned for the future of water, air, and soil in the Yakima Valley.

18 4. In short, here is evidence of ongoing assaults on the environment in  
19 South Yakima County:  
20

1 a. Over 60% of domestic wells one mile down gradient from a cluster of  
2 Yakima dairies pump water that is not safe to drink. Over 30% of  
3 wells three miles down gradient are similarly contaminated.

4 b. There is so much methane in South Yakima County air that investors  
5 are prepared to put up millions of dollars to harvest and sell that  
6 methane.

7 c. The WA State Dept. of Ecology categorizes the impacted population  
8 as underserved and overburdened, meaning the average per capita  
9 income is low, the average education level is low, and the percentage  
10 of non-white ethnicity is high.

11 5. Our laws say this pollution is illegal, but enforcing the law is difficult,  
12 even though the Clean Water Act and the Resource Conservation and Recovery  
13 Act provide for citizen lawsuits. It is impossible for an organization such as ours to  
14 go to court without legal representation.

15 6. Most of us received our early education in public schools where we  
16 pledged ourselves to the concept that America stands for “Liberty and Justice for  
17 all.” These are noble sentiments, and we still believe them. As we grew older, we  
18 learned, often the hard way, that securing justice sometimes means going to court.  
19 Navigating the legal world is not something we studied as we learned how to teach,  
20 how to heal the sick, how to grow food to feed others.

1           7.     FOTC believes that Tebbutt Law is one of the best, if not the best,  
2 when it comes to environmental law. To make a comparison to the medical world,  
3 we would not hire a general practitioner to perform brain surgery.

4           8.     The members of FOTC receive absolutely no compensation for our  
5 work. We fight to protect the natural world because we are good citizens. But we  
6 need legal help. Those who devote their lives to understanding the law, and  
7 presenting our cases honestly, accurately, efficiently, and effectively, deserve  
8 payment because they have sacrificed a great deal to achieve the necessary levels  
9 of knowledge.

10          9.     Full compensation for the attorneys who prepared and presented the  
11 case against DeCoster and DBD/SMD is proper and necessary, in our opinion,  
12 because:

- 13           a.     Regulatory agencies have failed to curtail abuses on these and other  
14                 concentrated animal feeding operations (CAFOs) in Washington state.  
15           b.     The only effective actions to address CAFO pollution in Washington  
16                 state are the result of citizen litigation using the Clean Water Act  
17                 (CWA) and the Resource Conservation and Recovery Act (RCRA).  
18           c.     Climate change impacts everyone, including us. Water is life.  
19           d.     Climate change kills real people, especially those with limited  
20                 resources.

- e. Preserving clean water has implications for air quality, for fish runs, for preventing extinction of plants and animals, for the health of humans.
- f. Few attorneys are willing to vigorously defend the rights of poor people and minorities when we face well-financed corporate interests whose only measure of success is profit.
- g. Future generations have rights to clean water and clean air.
- h. It takes time and resources to bridge the gap between ordinary citizens and the law.
- i. Public faith in government hinges on trust that our legal system works for everyone, not just a few.
- j. Tebbutt Law and the other entities who have assisted Tebbutt Law have achieved the only measurable results that we can see in the Lower Yakima Valley.

10. Some of the uncompensated work that Tebbutt Law has performed for the people of the Yakima Valley includes:

- a. Frequent meetings with FOTC to explain the litigation process. FOTC spends hundreds of hours trying to understand the law. We rely on Tebbutt Law for interpretation. Although the WA State Dept. of Ecology proclaims commitment to Environmental Justice, that agency

1 in fact counters every EJ statement with a defense of known polluters.

2 Tebbutt law is willing to call a polluter a polluter. WA Ecology is not.

3 b. Holding workshops to educate the people of the Yakima Valley about  
4 reasons for the groundwater pollution we face. Tebbutt Law and  
5 FOTC hosted one such presentation when the Lower Yakima Valley  
6 Groundwater Management Area Advisory Committee absolutely  
7 refused to host a presentation by attorneys from both sides of the 2015  
8 case *CARE v. Cow Palace*. Educating the public was part of the  
9 GWMA mission, but special interests on the committee blocked  
10 sharing of factual information. Federal, state, and local leaders  
11 remained silent when this took place.

12 c. Providing mostly uncompensated legal work for an appeal of  
13 Ecology's National Pollutant Discharge Elimination System (NPDES)  
14 general permits for CAFOs. The accepted way to enforce the Clean  
15 Water Act for point sources is through issuance of NPDES permits,  
16 yet less than 10% of WA CAFOs have permits. The WA State Court  
17 of Appeals agreed with the appellants in 2022 and ordered revisions to  
18 the WA permits. This ruling is further proof of Tebbutt Law's  
19 knowledge of the law and the issues.

1           11. None of this work is covered under the Motion to Cover Fees and  
2 Costs, but it is necessary work if ordinary citizens have any hope of exercising our  
3 rights to clean water. The attorneys in this case did not charge us for their time and  
4 took great financial risk to themselves. Tebbutt Law in particular and the other  
5 firms involved have also fronted costs for this expensive testing and other  
6 significant costs of litigation such as depositions, travel, and other related  
7 expenses. No other law firms in Washington have been willing to even represent  
8 us, let alone take the personal and financial risks that Tebbutt Law and the others  
9 have shouldered.

10           12. Those who break the law and pollute should pay their full fees and  
11 costs as the RCRA and CWA citizen suit provisions provide.

12           13. Tebbutt Law shares data from water and soil testing that was obtained  
13 through court orders and Consent Decrees that would otherwise be unavailable to  
14 ordinary citizens. This data is essential for analysis of the impacts from polluted  
15 groundwater. FOTC cannot go onto dairy properties and gather water samples. WA  
16 Ecology and the WA State Dept. of Agriculture do not gather this data.

17           14. When FOTC complains to Ecology and WSDA through the  
18 Environmental Report Tracking System (ERTS) that a dairy is discharging to  
19 groundwater, the investigators simply tell us that the dairy follows their nutrient  
20 management plan, which is not available to the public. Ecology and WSDA do not

1 back up this defense of the dairies with any groundwater testing. The only legal  
2 way to conclusively prove discharge is through groundwater testing and the only  
3 way to require testing is through a court order. Tebbutt Law has been forced to  
4 fight every step of the way to secure this information. This takes time and effort,  
5 but it is essential to prove or disprove ongoing pollution and to take steps to protect  
6 our community.

7 15. FOTC knows that people in South Yakima County are afraid to  
8 drink the water that comes from their faucets, that water in one small town smells  
9 and tastes so bad that people buy bottled water while paying for city water, that  
10 there are fewer songbirds in the Yakima Valley and more cow birds, that  
11 overapplied manure changes the soil pH and the microbiome, that wells are going  
12 dry, that fish runs are smaller. We know this but the courts only believe these facts  
13 when presented by costly expert witnesses with lots of letters behind their names.  
14 Experts are willing to testify in Yakima at reasonable rates because Tebbutt Law  
15 has a reputation for honesty, integrity, and quality work.

16 16. America stands for Liberty and Justice for All. This Motion for  
17 Award of Fees and Costs is a request to make that pledge a reality in fact. Without  
18 the availability of compensation to the attorneys, we would have no representation  
19 at all.



1 I swear under penalty of perjury that the foregoing is true and correct to the  
2 best of my knowledge.

3 DATED: September 15, 2023

/s/ Jean Mendoza

4 Jean Mendoza

5 Friends of Toppenish Creek  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2023, I electronically filed the foregoing document on the Court's CM/ECF filing system, which will automatically serve the following counsel of record:

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/s/ Jonathan D. Frohnmayer  
Jonathan D. Frohnmayer  
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